IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1745 OF 2007

Shri Suryakant Bandu Kamat
and ors. ..Petitioners

Vs.

Sou. Anusaya Ananda Shingade and anr. ..Respondents

Mr. V.C. Ghosalkar for petitioners.
Mr. D.P. Adsule, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : October 03, 2007.

P.C.:

1. Heard Mr. Ghosalkar the learned counsel for the petitioners. The petition impugns the order passed by the learned Additional Sessions Judge at Gadhinglaj on 31/7/2007 thereby allowing Criminal Revision Application No.22 of 2006 filed by the present respondent no.1. The revision application had filed Regular Criminal Case No. 15 of 2005 before the learned Judicial Magistrate, First Class at Gadhinglaj against the petitioners for the offences punishable under Sections 465, 471-A and 477 read with Section 34

of IPC and the said complaint came to be dismissed on 15/6/2006 on the ground that the accused i.e. the present petitioners are public servants and unless the sanction is obtained under Section 197 of Cr.P.C. of the appropriate authority, the criminal complaint would not lie against the accused. The complainant, therefore, challenged the said order in Criminal Revision Application No. 22 of 2006. The learned Additional Sessions Judge has referred to the decision of the Supreme Court in the case of Abdul Wahab Ansari vs. State of Bihar and anr. [AIR 2000 SC 3187] and held that none of the accused could be treated as public servants within the meaning of Section 21 of IPC and, therefore, the order passed by the learned JMFC came to be set aside and the complaint was restored to the file. The learned Magistrate has been directed to proceed to issue process and deal with the complaint on its own merits.

2. Mr. Ghosalkar the learned counsel for the petitioners has placed reliance on the decisions in the case of Ramesh Balkrishna Kulkarni vs. State of

Maharashtra [AIR 1985 SC 1655] and Govt. of Andhra Pradesh and ors. vs. P. Venku Reddy [(2002) 7 SCC 631]. He has also referred to the order passed by the District Deputy Registrar, Co-operative Societies, Kolhapur on 25/10/2004 by which the present petitioner no.3, who is an employee of Gadhinglaj Urban Co-Operative Bank Ltd. has been entrusted with the powers of recovery proceedings under Section 101 read with Section 137 of the Maharashtra Co-Operative Societies Act, 1960. Issuance of these powers alone will not bring petitioner no.3 within the ambit of the term "public servant" as defined in Section 21 of the IPC, as has been rightly held by the learned Additional Sessions Judge. Mr. Ghosalkar also referred to the scheme of Section 156 of the Maharashtra Co-operative Societies Act, 1960. Delegation of powers under the said Section for a short period by the Deputy Registrar to initiate the recovery proceedings would not per se bring such delegatees within the purview of "public servants" as defined under the IPC.

3. Hence, the view taken by the learned Addl. Sessions Judge cannot be termed as perverse or grossly erroneous so as to cause interference under the supervisory powers of this court under Article 227 of the Constitution.

4. In the result, the petition is rejected.

(B.H. Marlapalle,J.)